UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/536,383	03/28/2000	Sandra K. Richardson	M3653.0001/P001-B	5614

24998 7590 11/25/2003

DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP
2101 L STREET NW
WASHINGTON, DC 20037-1526

EXAMINER	
THOMPSON JR, FOREST	

ART UNIT	PAPER NUMBER
3625	

DATE MAILED: 11/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No. 13

Application Number: 09/536,383
Filing Date: March 28, 2000
Appelant(s): RICHARDSON ET AL.

Jon D. Grossman
For Appellants

EXAMINER'S ANSWER

This is in response to the appeal brief filed 08/25/2003.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The Appellants' statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The Appellants' statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellants' brief includes a statement that claims 1, 6-8, 10-12, and 18 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

Duncan, William R.; A Guide to the Project Management Body of Knowledge; PMI Standards Committee, Project Management Institute; 1996.

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims. This rejection is set forth in prior Office Action, Paper No. 7, and repeated below.:

Claims 1, 6-8, 10-12, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Duncan.

Claims 1, 10, 18: Duncan discloses

- breaking a current project into a plurality of tasks, wherein the performance of each task is tracked on the basis of at least one task related event (pg. 30-32, para. 3.3.2; pg. 59, para. 6.1);
- setting a tasking horizon based on a predetermined time internal (pg. 30-32, para. 3.3.2; pg. 170), described in the context of target finish date determination and schedule development;
- associating at least two verbs with said at least one task related event for each of said plurality of tasks (pg. 46, para. 4.3.3.3), where verbs and language are encompassed by lessons learned;
- receiving a respective predicted date for at least one task related event (pg. 31; fig. 3-5 [6.3]), which is disclosed in activity duration estimating;
- receiving a corresponding actual date for each task related event for which a predicted date was received (pg. 31; fig. 3-5 [6.4]; pg. 159), which is disclosed as schedule development, activity definition and actual start date;

- for each actual date received, receiving a verb associated with the respective task related event, said received verb being one of said at least two verbs (pg. 31; fig. 3-5 [6.4]; pg. 159), which is disclosed as schedule development, activity definition and actual start date; and

- tracking the performance of said project in real time based at least in part on the predicted dates, actual dates and verbs received for each of said task related events (pg. 31; fig. 3-5 [6.3, 6.4]; pg. 159);

capturing at least the predicted dates, actual dates and verbs received for each of said task related events and updating the project status based on the captured information, to thereby provide accurate and real time data regarding said current project and said plurality of tasks of said project (pg. 31; fig. 3-5 [6.3, 6.4]; pg. 159);

- at least one task assignment station (pg. 96; fig. 9-2);

- said management module and said task assignment station are operationally connected (pg. 8-10, para. 1.4-5; fig. 1-2);

- said management module receives predicted dates and actual dates entered at said task assignment station (pg. 31; fig. 3-5 [6.3]; pg. 31; fig. 3-5 [6.4]; pg. 159); and

- a human resources module (pg. 93-101, Chapter 9).

Claim 6. Duncan discloses computing a risk factor for at least one of said plurality of tasks based on data of at least one of said computed churn and said received verb, said data corresponding respectively to said at least one of said plurality of tasks (pg. 115-118, para. 11.2; fig. 11-1; fig. 11-2).

Claim 7. Duncan discloses:

- comparing said plurality of tasks of said current project to a plurality of tasks of at least one past project (pg. 46; para. 4.3.3.3; fig. 6-1; para. 6.1.1.3; pg. 113 para. 11.1.1.3);
- extracting previously performed task completion data for said plurality of tasks for said at least one past project (pg. 46; para. 4.3.3.3; fig. 6-1; para. 6.1.1.3; pg. 113 para. 11.1.1.3); and
- computing an expected task completion time for at least one of said plurality of tasks of said current project based at least in part on said previously performed task completion data (pg. 46; para. 4.3.3.3; fig. 6-1; para. 6.1.1.3; 6.1.3; pg. 113 para. 11.1.1.1-3).

Claim 8. Duncan discloses:

- comparing said plurality of tasks of said current project to a plurality of tasks of at least one past project (pg. 46; para. 4.3.3.3; fig. 6-1; para. 6.1.1.3; pg. 113 para. 11.1.1.3);
- extracting at least one risk factor associated with said plurality of tasks of said at least one past project (pg. 46; para. 4.3.3.3; fig. 6-1; para. 6.1.1.3; pg. 113 para. 11.1.1.3); and
- computing a risk factor for at least one of said plurality of tasks for said current project based at least in part on said extracted at least one risk factor (fig. 11-1 [11.1.3;

11.2.2-3; 11.3.3; 11.1-3); as encompassed by the identification and quantification of risk.

Claim 11. Duncan does not specifically disclose computing churn for each task related event for which a predicted date and an actual date was received, based on differences between corresponding ones of said received predicted and actual dates relative to said tasking horizon. However, Duncan does disclose the necessary functionality for computing churn for each task related event for which a predicted date and an actual date was received (pg. 107-108, para. 10.3; pg. 109 fig. 10-2; pg. 110 fig. 10-3; pg. 113, para. 11.1.1). Therefore, the claim is rejected.

Claim 12. Duncan discloses the performance of said project is tracked in relation to a work unit, said work unit comprising an individual, a team, a group, a branch, a division, or an entire company (pg. 93-101, Chapter 9).

(11) Response to Argument

Appellants argue, at pg. 7-14, that the definitions of tasking horizon, verb and churn used by examiner in the Final Rejection are not correct.

Examiner disagrees. Appellants attempt to limit the definition of tasking horizon, verb and churn to a single definition in the specification. But the specification has a plurality of definitions. Appellants' arguments do not preclude the claim for encompassing in scope the other definitions that the examiner employs in his Final Action.

Therefore, examiner maintains the rejection.

Appellants argue, at pg. 7-8, that a tasking horizon is necessarily a window of time which is independent of any specific task in the project, and that the term "tasking horizon" as used in the context of the present invention can only refer to a task independent, fixed increment of time which is typically much smaller than the project duration, and into or out of which task-related event dates can be scheduled or moved.

Examiner disagrees. Appellants have redefined the examiner's terms. The First Action (see Paper #5) presented the definitions for tasking horizon, verb and churn that the examiner used in the rejection of Appellants' application. Examiner stated "the duration or time included in the planned time span defined by the task start and stop dates," i.e., the duration of time included in the planned time span defined by all of the start and stop dates for all of the tasks of a project or activity (emphasis added). Appellants have redefined examiner's definition to pertain to only one task in an activity or project encompassing multiple tasks. Additionally, Duncan discloses a Glossary of terms (see pg. 157) that may be used with the Duncan invention and that encompasses presenting verbs (and other terms) used during the various stages of an activity or project. Duncan also defines activity as "an element of work performed during the course of a project. An activity normally has an expected duration, an expected cost, and expected resource requirements. Activities are often subdivided into tasks" at pg. 159. Examiner asserts that the terminology presented by examiner encompasses Appellants' definitions of tasking horizon and verb. Examiner's

definitions were based on definitions from Appellants' specification on pg. 8. Examiner asserts that the tasking horizon cannot be independent of tasks as tasks depend on the tasking horizon for scheduling. If the tasking horizon was independent of tasks, then there could be no fixed nor variable relationship between tasks and the tasking horizon, as described by Appellants in the context of *Each day, or at set intervals, the system checks the unassigned tasks and assigns tasks that fall within the next tasking horizon*, indicating a time relationship between the tasking horizon and the tasks assigned.

Therefore, Examiner maintains the rejection.

Appellants argue, on pg. 8-9, that the Office Action indicates that the "tasking horizon" as recited in Appellants' claims is met by section 3.3.2 and p. 170 in Duncan, i.e., "described in the context of target finish date determination and schedule determination." (Office Action, p. 4). Page 170 in Duncan, however, is merely a glossary page which nowhere discloses a tasking horizon as used in Appellants' invention. Section 3.3.2 in Duncan merely provides an overview of the "Planning Processes" that are performed in a project. The portion of this cited section most relevant to **Appellants'** "tasking horizon" concept is Duncan's "Activity Duration Estimating" and "Schedule Development," both mentioned on page 31 in Duncan.

Examiner disagrees. Again, Appellants' definition of *horizon* on pg. 8 of the specification states *The farthest point in time in the future where a manager believes a task will be completed as planned (usually referred to as the tasking horizon).* Using this definition in consideration with Duncan's definition of "activity" and "task" as presented

above, examiner rejected Appellants' claims as shown in Paper #7. This definition is in consonance with the disclosures of Duncan as identified in the Final Action rejection.

Therefore, Examiner maintains the rejection.

Appellants argue, at pg. 10, that the unique concept of framing the progress a project through a sequence of fixed time periods, as defined by the term "tasking horizon" in the claimed invention, is not taught or suggested in Duncan.

Examiner disagrees. Examiner asserts that normal project planning encompasses defining the project as a series of sub-projects or activities that produce a desired result. These sub-projects or activities commonly have some interdependence on scheduling and completion. Also, while all project planners hope for accomplishing activities as originally planned, frequently, changes have to be accommodated to carryon the activity, and the project. Duncan discloses project planning encompassing activity planning to complete the project. Duncan presents Schedule Control documentation in section 6.5, pg. 71-72. This section presents aspects related to changing/updating a project's schedule, which encompasses activities' schedules, to address changing schedule dates for activities that make require changes to the baseline schedule, which encompasses Appellants' aspect of moving tasks into or out of the tasking horizon.

Therefore, Examiner maintains the rejection.

Appellants argue, at pg. 10-12, that Duncan fails to teach or suggest a definition of the term "verbs" as used in accordance with the present invention and recited in claims 1 and 10. In the context of the present invention, "verbs" are part of a predefined and structured set or sets of words and phrases (or reasons) that have been programmed into the modeling system of the present invention.

Examiner disagrees. Duncan discloses a Glossary of terms (see pg. 157) that may be used with the Duncan invention and that encompasses presenting verbs (and other terms) used during the various stages of an activity or project.

Therefore, examiner maintains the rejection.

Appellants argue, at pg. 12, that the Office Action asserts that the process segment of "associating at least two verbs with [each] task related event" as recited in Appellants' claims is met by section 4.3.3.3 in Duncan, entitled "[l]essons learned" (Office Action, p. 4). Section 4.3.3.3 in Duncan (p. 46) states that "[t]he causes of variances, the reasoning behind the corrective action chosen, and other types of lessons learned should be documented so that they become part of the historical database for both this project and other projects of the performing organization." Thus, it can be seen that the "lessons learned" in Duncan merely reflect the generalized concept and goal of learning from the past, and is not restricted to associating predetermined words or phrases to be selected later by a project worker. The cited section of Duncan, and, for that matter, Duncan's entire disclosure lacks any suggestion of a set or sets of predetermined, structured words or

phrases associated with the tasks or task related events of the tasks during a planning phase of the process, as defined by the term "verbs" used in the present invention.

Examiner disagrees. Examiner asserts that Appellants' statement above of *it can be seen that the "lessons learned" in Duncan merely reflect the generalized concept and goal of learning from the past, and is not restricted to associating predetermined words or phrases to be selected later by a project worker* (emphasis added) encompasses Appellants' claimed aspect of "associating at least two verbs with [each] task related event."

Therefore, examiner maintains the rejection.

Appellants note, at pg. 12, that the capability of the management module to compute churn as recited in claim 18 has not been addressed in the final Office Action. As such, - claim 18 appears to be allowed over Duncan on the basis of at least the computing churn capability.

Examiner agrees. Examiner failed to address this aspect in the rejection of claim 18. Appellants stated, on pg. 12, that *[C]claim 11 recites "computing churn ... based on differences between corresponding ones of [] received predicted and actual dates relative to said tasking horizon." Claim 18 recites a similar capability performed by the claimed management module.* However, Examiner rejected claim aspects similar to those of claim 18 in the rejections of claims 6 and 11. Therefore, the same rejection can be applied.

Appellants argue, at pg. 12-14, that page 15, line 11 through page 17, line 4 in Appellants' specification provides a detailed explanation of all the scenarios in which churn is generated, including when a predicted or estimated date differs from an actual date.

Examiner disagrees. Appellants' specification states, at page 15, line 15, "one example of the general preprocessing of churn is as follows:" that specifically discloses that it is one example, inferring that more exist in reality. Additionally, Appellants' specification states "Based on these churn preprocessing rules, an example of churn generation rules is as follows:" that specifically discloses that it is an example, inferring that more may exist in reality. Therefore, Appellants' statement that his specification provides a detailed explanation of all scenarios in which churn is generated, is not disclosed by the referenced section of the specification. The specification's disclosure does not specifically state that it encompasses all the scenarios in which churn is generated.

Therefore, examiner maintains the rejection.

Appellants argue, on pg. 12-14, that the Office Action contends that paragraph 10.3 on pages 107-108, Fig. 10-2 on page 109, Fig. 10-3 on page 110, and paragraph 11.1.1 on page 113 in Duncan "disclose[s] the functionality for computing churn for said tasks." (Office Action, p. 7). Nowhere in these cited passages and figures, or anywhere else in the entire reference, does Duncan disclose computing anything relative to a difference between two dates: relative to a tasking horizon or any other fixed quantity. The closest concept in Duncan to Appellants' churn computation feature is sections 10.3.2.2 and 10.3.2.4 on page 108 in Duncan, and Fig. 10-3, which discloses only "comparing actual

project results to planned or expected results" for cost and schedule variances in section 10.3.2.2, and the concept of calculating the difference between a projected cost and an actual cost in section 10.3.2.4 and Fig. 10-3. These variances in Duncan are simple differences between estimated and actual data. Duncan is completely silent as to the computation of these variances with respect to a tasking horizon or any other fixed standard. As such, Duncan does not disclose or suggest the "functionality" of computing churn as defined in accordance with Appellants' claimed invention.

Examiner disagrees. Duncan discloses, in section 10.3.2, discloses Appellants' invention in the context of determining variance analysis, trend analysis, and earned value analysis. These analyses involve variance mechanisms to analyze events that impact schedule, cost, performance, and risk, among other things. The disclosed descriptions encompass Appellants' claimed aspects. Specifically, Duncan states (at section 10.3.2.2-4) that:

- *Variance analysis involves comparing actual project results to planned or expected results. Cost and schedule variances are the most frequently analyzed, but variances from plan in the areas of scope, quality, and risk are often of equal or greater importance.*
- *Trend analysis involves examining project results over time to determine if performance is improving or deteriorating.*
- *Earned value analysis in its various forms is the most commonly used method of performance measurement. It integrates scope, cost, and schedule measures to help the project management team assess project performance. Earned value involves calculating three key values for each activity.*

These aspects of Duncan encompass computing various parameters (including churn) that pertain to schedule. Examiner maintains that Duncan discloses Appellants' claimed aspect.

Therefore, examiner maintains the rejection.

Appellants argue, at pg. 14, that while claims 6, 8, and 18 are dependent claims and therefore incorporate the patentably distinguishable features discussed above recited in the respective independent claims from which these claims depend, claims 6, 8 and 18 also recite additional subject matter which renders the claims allowable over Duncan. Specifically, claims 6, 8, and 18 each recite "computing a risk factor" or the capability to do so. Appellants' specification describes the term "risk factor" as either a percentage probability that an actual task date will deviate from the estimated task date, for example, or as a standard deviation of time within which the actual task date is likely to vary from the estimated date (specification, p. 19, ln. 1- p. 20, ln. 2, *inter alia*). That is, the risk factor computed in the claimed invention is a number.

Examiner disagrees. Duncan discloses, at section 11.2.2 (pg. 115), that *Expected monetary value, as a tool for risk quantification, is the product of two numbers:*

- *Risk event probability-an estimate of the probability that a given risk event will occur.*
- *Risk event value-an estimate of the gain or loss that will be incurred if the risk event does occur.*

The risk event value must reflect both tangibles and intangibles.

Examiner asserts that this disclosure encompasses computing a risk factor.

Therefore, examiner maintains the rejection.

Appellants argue, at pg. 15, that in claims 6, and 18, the risk factor is computed based on churn data and received verb data. In order to obtain churn data and received verb data, at least a portion of a task within a project must have been executed. Thus, section 11.2 in Duncan as cited in the Office Action does not teach or suggest the claimed function/step of computing a risk factor during the execution phase of the project, much less based on computed churn and a selected verb, as recited in Appellants' claims . . . With respect to the computed risk factor as recited in claim 8, the cited passages in Duncan, and the entire disclosure of Duncan for that matter, fail to provide any teaching or suggestion to "comput[e] a risk factor ... based at least in part on ... at least one risk factor" "associated with [a] plurality of tasks of [] at least one past project," as recited in claim 8.

Examiner disagrees. Duncan discloses the functionality of computing a risk factor during project execution at section 11.4.3-4, in the disclosure of corrective action for risk response control that consists primarily of performing the planned risk response, and as anticipated risks risk events occur or fail to occur, and as actual risk event effects are evaluated, estimates of probabilities and value, as well as other aspects of the risk management plan, should be updated. Also, Duncan discloses (at section 11.1.1.3) *Historical information about what actually happened on previous projects can be especially helpful in identifying potential risks. Information on historical results is often available from the following sources:*

• Project files-one or more of the organizations involved in the project may maintain records of previous project results that are detailed enough to aid in risk identification. In some application areas, individual team members may maintain such records.

• Commercial databases-historical information is available commercially in many application areas.

• Project team knowledge-the individual members of the project team may remember previous occurrences or assumptions. While such recollections may be useful, they are generally less reliable than documented results.

Therefore, examiner maintains the Duncan discloses the claimed aspects of Appellants' invention.

Therefore, Examiner maintains the rejection.

Appellants argue, at pg. 16-17, that Duncan also fails to teach or suggest tracking the performance of the project or its tasks in real time as recited in Appellants' claims 1 and 10.

Examiner disagrees. Duncan discloses:

- (at section 3.2) *The process groups are linked by the results they produce* **(emphasis added)***-the result or outcome of one becomes an input to another. Among the central process groups, the links are iterated-planning provides executing with a documented project plan early on, and then provides documented updates to the plan as the project progresses* **(emphasis added)**. *These connections are illustrated in Figure 3-1. In addition, the project management process groups are not discrete, one-time events; they*

are overlapping activities which occur at varying levels of intensity throughout each phase of the project. Figure 3-2 illustrates how the process groups overlap and vary within a phase.

- (at section 11.4.3.2) *Updates to risk management plan. As anticipated risk events occur or fail to occur, and as actual risk event effects are evaluated* **(emphasis added)**, *estimates of probabilities and value, as well as other aspects of the risk management plan, should be updated.*

Examiner maintains that these disclosures reveal tracking the performance of the project or its tasks in real time in the context of the terminology of the disclosure: *As anticipated risk events occur or fail to occur,* and *the links are iterated-planning provides executing with a documented project plan early on, and then provides documented updates to the plan as the project progresses.*

Therefore, Examiner maintains the rejection.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Conferees

Vincent Millin
Supervisory Patent Examiner
(Conferee)

James Trammell
Appeal Conference Specialist
(Conferee)

VINCENT MILLIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

Forest Thompson
Patent Examiner
November 5, 2003
(Conferee)

DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP
2101 L STREET NW
WASHINGTON, DC 20037-1526